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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 CATHOLIC SOCIAL SERVICES,
11 INC., - IMMIGRATION PROGRAM,
12 et al.,

NO. CIV.S-86-1343 LKK/JFM

13 Plaintiffs,

14 v.

O R D E R

15 JANET NAPOLITANO, SECRETARY
16 U.S. DEPARTMENT OF HOMELAND
17 SECURITY, et al.,

18 Defendants.
19 _____/

20 On August 24, 2009, Julio Cesar Benitez ("Benitez") filed
21 objections to the special master's decision that he was not
22 entitled to class membership under the court approved settlement
23 agreement in this case. On November 17, 2009, the court granted
24 Benitez sixty (60) days to present information to the court that
25 his criminal convictions do not bar class membership. On January
26 15, 2010, Benitez filed a request for a continuance. For the
reasons below, the court denies Benitez's request for a continuance
and orders that his objections, Doc. 668, are overruled.

1 Benitez argued that he was intimidated and confused by an
2 officer during his interview concerning his application for class
3 membership with the Defendant United States Citizenship and
4 Immigration Services ("USCIS"). Specifically, Benitez asserts that
5 the officer forced him to alter his responses to questions
6 concerning travel from the United States between 1987-1988.
7 Applicants are only entitled to be class members if they left the
8 country during this time period. The Special Master denied
9 Benitez's appeal on the grounds that his response to this question
10 barred class membership and that his criminal convictions barred
11 class membership. Because the court could not confirm, based on the
12 record before it, whether the criminal convictions were an actual
13 bar, it ordered Benitez to submit supplemental briefing as to this
14 issue.

15 The terms of the settlement agreement indicate that "neither
16 the Defendants nor the applicant shall be permitted to submit new
17 evidence to the Special Master." Joint Motion to Approve Settlement
18 of Class Action, Dec. 1, 2003, Ex. 1 ("Settlement") ¶ 8.
19 Accordingly, the Special Master must make its decision as to
20 whether class membership is proper based upon the record before the
21 USCIS officer. This court is similarly bound to decide whether
22 class membership is proper based upon this record.

23 In Benitez's request for a continuance, he states that
24 currently his criminal convictions bar class membership, but that
25 he is actively seeking reductions or expungement in these
26 convictions, which potentially could in the future not bar class

1 membership. Through this request, Benitez admits that the evidence
2 presented to the USCIS barred him from class membership because of
3 his criminal convictions. The court cannot consider new evidence
4 in an appeal of the decision of the Special Master, and the
5 evidence Benitez seeks to obtain is clearly new. Thus, Benitez's
6 objections are overruled.

7 The bar to the submission of new evidence to the Special
8 Master and the court, however, does not extend to evidence of
9 misconduct or illegality in the USCIS's initial review of
10 applications for class membership. For example, if an applicant
11 appeals the decision of the USCIS denying class membership because
12 of unlawful coercion or threatening behavior of a USCIS officer,
13 the special master shall consider evidence of such misconduct in
14 the appeal, even though such evidence was not presented to the
15 USCIS. This issue is not reached in this case, however, because
16 Benitez's application as presented to USCIS was barred due to his
17 criminal convictions.¹

18 For the foregoing reasons, the court orders that Benitez's
19 Objections to the Special Master's Decision, Doc. 668, are
20 OVERRULED.

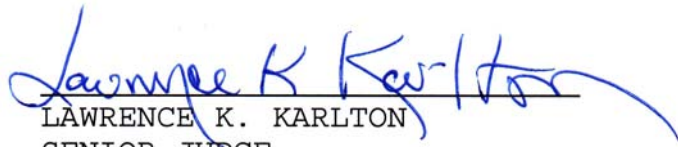
21 The court further orders that the clerk of court shall mail
22 a copy of this order to Benitez at the following address: 15445
23

24 ¹ The court only decides the question of class membership.
25 Benitez may be entitled to adjustment of status through other
26 provisions of the Immigration and Nationality Act. These avenues,
if any such exist, may also be aided by the reduction or
expungement of Benitez's criminal convictions.

1 Cobalt St., #134, Sylmar, CA 91342.

2 IT IS SO ORDERED.

3 DATED: February 11, 2010.

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7 LAWRENCE K. KARLTON
8 SENIOR JUDGE
9 UNITED STATES DISTRICT COURT
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